



**Republic v Onzere (Criminal Case 16 of 2021)
[2025] KEHC 15849 (KLR) (5 November 2025) (Sentence)**

Neutral citation: [2025] KEHC 15849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 16 OF 2021
JN KAMAU, J
NOVEMBER 5, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

HESBON MUTONGI ONZERE ACCUSED

SENTENCE

1. On 23rd June 2025, this court convicted the Accused person herein for the offence of the murder of Florence Mueni Kiswili (hereinafter referred to as “the deceased”) contrary to Section 203 as read with Section 204 of the Penal Code thereof under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In his mitigation, the Accused person expressed remorse and indicated that he was now reformed. He stated that he had two (2) children and that his last child was five (5) years at the time that he was arrested. He pointed out that the said child was now thirteen (13) years. He added that the mother of the children abandoned them and they had missed fatherly love and care since his arrest in 2018. He asked the court to take into account the period that he had been in remand while the trial proceeded.
3. On its part, the Prosecution urged this court to mete upon the Accused person a custodial sentence as the Pre-Sentence Report was negative. It averred that the local administration, community and the Probation Office had recommended a custodial sentence. It pointed out that a custodial sentence would enable the Accused person be rehabilitated because of past conduct where he was involved in various crimes and thus deter him and other would-be offenders from committing a similar offence. It urged this court to look at the injuries that the deceased sustained and consider the objectives of sentencing when meting out the sentence against the Accused person.
4. According to the Pre-sentence Report of J. Sahani, Probation Officer, Vihiga County dated 30th July 2025 and filed on 15th August 2025, the Accused person was forty-five (45) years old. He attended



Chavakali Primary School and Butere Boys Secondary School. He dropped out of school in Form Two (2) following his father's illness. He remained at home where he assisted his parents with farming activities and pig rearing, a small-scale project managed by his father before his illness. He later relocated to Nairobi in December 2017, shortly after his father's death, and found employment in the informal construction sector, primarily engaging in unskilled masonry work.

5. He returned home in the year 2018 and shortly thereafter he was arrested for the offence herein. He was married but was not blessed with any child. His wife left after she lost hope on his release and ability to resume normal life. He had a history of alcohol consumption and criminal activities such as defilement, stealing and possession of illicit alcoholic beverages.
6. He denied having committed the offence and stated that he was falsely implicated and believed that he was framed by a friend. He pointed out that the period he had spent in custody was profoundly challenging and transformative and had exposed him to difficult life lessons and had shaped his outlook on responsibility, choices and personal conduct. He pleaded with the court to consider granting him non-custodial sentence, expressing a desire to re-integrate into society and make a positive contribution to his family and community if granted the opportunity.
7. His family sought for leniency of the court stating that he was the only male figure remaining in the family and he would provide stability and assume responsibility for the family's welfare if released.
8. The deceased's family could not be traced. On the other hand, the Local Administration and the community reported that the offender was frequently involved in petty theft, house and shop break-ins and related offences. They opined that there was a possibility of him resuming criminal activities if he was released prematurely.
9. According to them, a custodial sentence would be more appropriate with the aim of deterring future offending and reducing the likelihood of recidivism by ensuring that the offender is released at a stage in life when physical capacity for crime was diminished.
10. The Probation Officer recommended a custodial sentence as an appropriate sentencing option as it would align with the local administration concerns and serve as a continued measure of deterrence and public safety.
11. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
12. It was important that the sentence communicate to the community, condemnation of their criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
13. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
14. After serving a sentence, the offender could rejoin society as a reformed person capable of re-integration into the society. He would have learnt his lesson and others would have learnt through him. Killing



- someone was an abomination in the society and hence justice not only needed to be done but it had to be seen to be done.
15. This court looked at the Post-Mortem Report dated 6th September 2018 and noted that the deceased died as a result of asphyxia secondary to cervical spine injury. This was evidence of serious assault of the deceased by the Accused person.
 16. Although the Accused person and his family pleaded for leniency, this court did not find it prudent to grant him a non-custodial sentence due to the nature of the offence. The injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing her.
 17. The Accused person had continued to deny that he committed the offence. Although he expressed remorse during his mitigation, the denial could be interpreted to mean that he was really not remorseful of what happened to the deceased or that he did not acknowledge and/or appreciate the magnitude of the offence that he had committed. The killing of the deceased was not worth robbing her the mobile phone.
 18. Having considered the facts of this case and the Accused person's mitigation and weighed against the death sentence that was prescribed for the offence of murder under Section 204 of the Penal Code, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost in very unfortunate circumstances. Indeed, the Probation Office had found that the Accused person was unsuitable for a non-custodial sentence. It was the considered view that a sentence of twenty (20) years imprisonment would be suitable and adequate herein. It was the considered view of this court that had he entered into a Plea Agreement, it could have considered meting out a less stiff sentence upon the Accused person herein.
 19. Going further, this court was mandated to consider the period the Accused person spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
 20. The said Section 333(2) of the Criminal Procedure Code provides that: -

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
 21. Further, the Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”
 22. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
 23. The Accused person was arrested on 16th October 2018. Although he was granted bond, he did not seem to have posted the same. He was convicted on 23rd June 2025 and from that time, he had remained



in custody. The time he remained in custody therefore ought to be taken into consideration while computing his sentence.

Disposition

24. Accordingly, having convicted the Accused person of the offence of murder contrary to Section 203 as read with 204 of the Penal Code, he be and is hereby sentenced to twenty (20) years imprisonment which will run from today.
25. For the avoidance of doubt, the period the Accused person spent in custody between 16th October 2018 and 4th November 2025 before his sentencing be and his hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
26. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 5TH DAY OF NOVEMBER 2025

J. KAMAU

JUDGE

